

REMARKS

Claims 1-116 are pending in the application, claims 1-26, 53-69, 87-95, 105-109, and 115 having been withdrawn from consideration as a result of a previous restriction requirement, and claims 27-52, 70-86, 96-104, 110-114, and 116 having been elected for examination. Claims 27, 70, 96, 110, and 116 are the only independent claims.

Claims 27-52, 70-86, 96-104, 110-114, and 116 stand rejected under 35 U.S.C. §102(a) as being anticipated by Ishigaki et al. (U.S. 6,271,455). Claim 33 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ishigaki. Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

Rejection under 35 U.S.C. §102(a) **as being anticipated by Ishigaki**

Claims 27-52, 70-86, 96-104, 110-114, and 116 stand rejected under 35 U.S.C. §102(a) as being anticipated by Ishigaki.

1. No musical instrument is taught

Claim 27 recites an “external musical instrument.” Page 3 of Applicant’s last response sets forth reasons why Ishigaki provides no such teachings. In particular, Applicant noted that the broadcasting equipment 1 and associated server 2, either individually or collectively as alleged in the Action, do not teach or suggest a “musical instrument.”

Examiner Fletcher failed to address this point directly in the Response to Arguments section of the present Action (Action, pg. 7). However, in the line above this portion of the Action, the

Examiner remarked: “A musical instrument in its broadest terms can be defined as any device for providing musical tones.” (Emphasis added).

Applicant respectfully submits that the Examiner incorrectly states the applicable standard with regard to claim interpretation. The MPEP and overwhelming CAFC authority requires not that a claim term be defined in its “broadest terms,” as the Examiner incorrectly identifies. To the contrary, claims must be “given their broadest reasonable interpretation consistent with the specification.” MPEP § 2111 (Citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (emphasis added)).

The present specification is replete with examples of musical instruments. Indeed, the term “musical instrument” or “instrument” is referenced over 500 times in the specification. Dozens of examples of such elements are depicted in the 72 drawing figures. Applicant emphasizes that the specification never refers to a “musical instrument” as “digital satellite broadcasting equipment” or a “music piece server.”

Consider for the moment the Examiner’s assertion that a musical instrument is defined as any device for providing musical tones. Even if true, the identified devices of Ishigaki do not provide such musical tones, and therefore, cannot teach a musical instrument. For instance, satellite broadcasting equipment 1 does not transmit “musical tones.” Even if the broadcast transmitter transmits signals using a modulation technique which includes tones, which are also referred to as subcarriers, such tones are not “musical tones.” Server 2 is deficient for similar reasons. In particular, server 2 provides compressed music which is provided to broadcasting equipment 1. (Col. 4, lines 43-51). The compressed music provided by server 2 is a digital signal, not a musical tone.

The Examiner leads Applicant to believe that a satellite transmitter and a computer server are musical instruments. Applicant submits that this is not a reasonable interpretation of this claim element, and is contrary to the meaning of this term to those of ordinary skill of the art, as well as what one would interpret this element in view of the teachings of the present specification.

Applicant requests, once again, that the Examiner clarify how broadcasting equipment 1 and server 2 (both are relied upon in the Action) can reasonably be interpreted as a “musical instrument.”

2. Inconsistencies – different elements are used to teach a “musical instrument”

The present Office Action is inconsistent in its application of prior art elements to the claimed “musical instrument.” On page 2, the Action indicates that Fig. 2 (which is a detailed view of digital satellite broadcasting equipment 1 and music piece server 2) teaches this element. Then, page 7 of the Action addresses an unidentified claim by stating that MIDI data forming apparatus 41 is a musical instrument. Further, in the very next paragraph, the Action states that element 45 is a musical instrument. Further still, in the Response to Arguments section of page 7 of the present Action, the Examiner states that “Obiviously [sic] a midi data producing apparatus can be considered a musical instrument.”

This is confusing. What element of the asserted reference is being used to teach the claimed “musical instrument.” Clarification is requested.

3. Ishigaki discloses different elements for generating audio and MIDI control signals

Claim 27 further recites “audio signals generated by an external musical instrument,” and “wherein said MIDI control signals are generated by said external musical instrument.” Applicant

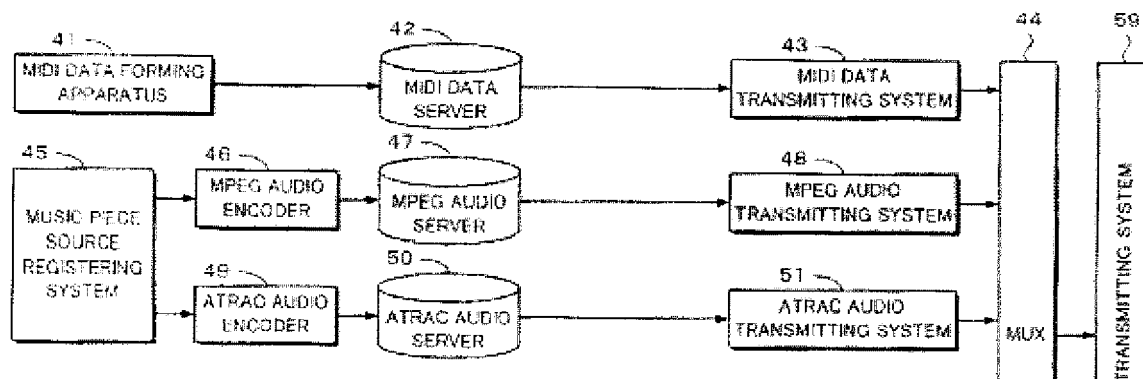
emphasizes that the both the audio signals and the MIDI control signals are generated by the same element; namely an external musical instrument.

The Action relies upon music piece source registering system 45 as generating the claimed “audio signal.” The Action further relies upon a completely different device, MIDI data forming apparatus 41, as purportedly generating the claimed “MIDI control signals.” Fig. 2 of Ishigaki clearly shows that system 45 is separate and distinct from apparatus 41. Consequently, the so called audio signal and MIDI control signal of Ishigaki are at best generated by two different entities. This is completely different from the method recited in claim 1 which requires the audio signals and MIDI control signal to be generated by the same element (external musical instrument). This reason alone distinguishes claim 27 over the Ishigaki.

4. Ishigaki does not teach “audio signals “

Pages 5 and 6 of Applicant’s last response provided extensive remarks as to why Ishigaki does not teach or suggest the claimed “audio signals.” Applicant recognizes that the Examiner responded to Applicant’s comments relating to Ishigaki as not providing three audio signals. However, the Examiner failed to address the substance of Applicant remarks—Ishigaki does not teach or suggest even a single audio signal. Applicant will again address this point.

As before, the present Office Action indicated that system 48 and 51 teach the “audio signals” aspect of claim 1. It is recognized that the Examiner has withdrawn the MIDI control signal of system 43 as providing an audio signal. For the convenience of the Examiner, Applicant reproduces below relevant portions of FIG. 2 of Ishigaki which relate to this portion of the rejection.



As a first point, Applicant again submits that neither system 48 nor system 51 provide “audio signals.” System 48 is described as packetizing MPEG audio data, and system 51 apparently provides packetized adaptive transform acoustic coding (ATRAC) data. (Ishigaki, col. 5, lines 19-25). For the assertions of the Office Action to be valid, both the MPEG audio data and the ATRAC data must each be interpreted as an “audio signal.”

The Examiner apparently considers MPEG audio data and ATRAC data to disclose the claimed “audio signal.” Such a position is inconsistent with what is well understood by one of ordinary skill in the art, and furthermore is inconsistent with the explicit teachings of Ishigaki.

Consider first the MPEG audio data provided by system 48. Ishigaki describes this MPEG audio data as being provided to receiver 60A. (Fig. 3, col. 5, lines 57-60). The MPEG audio data is supplied to MPEG audio decoder 65 to produce decoded audio data. (Col. 6, lines 43-47). Next, “the decoded audio data is converted into an analog audio signal by a D/A converter 65.” (Col. 6, lines 58-59) (emphasis added). What this means is that the signal provided by system 48 is not an audio signal. This is because the signal provided by system 48 is later converted into an audio signal. If the MPEG audio data provided by system 48 was indeed an audio signal, as the Examiner alleges, then there would be no need to later convert such a signal into an audio signal.

Consider now the ATRAC data provided by system 51. Ishigaki describes this ATRAC data as being provided to receiver 60B (Fig. 4, col. 8, lines 51-17). The ATRAC data is supplied to the ATRAC audio decoder 90 to produce decoded audio data. (Col. 8, lines 33-38). In a manner similar to the MPEG audio data, Ishigaki further describes processing relating to the decoded ATRAC data as: “the decoded audio data is converted into an analog audio signal by a D/A converter 65.” (Col. 8, lines 39-40). Since the ATRAC data provided by system 51 is later converted into an audio signal, such data cannot be an audio signal as the Examiner alleges.

To conclude on this point, Applicant submits that one of ordinary skill in the art easily understands that MPEG audio data (e.g., signaling from system 48) and ATRAC data (e.g., signaling from system 51) are not “audio signals.” Applicant further submits that Ishigaki makes the explicit distinction between audio signals and MPEG audio data and ATRAC data. Lastly, there is absolutely no support for the position set forth by the Examiner on this point. Indeed, the Examiner failed to address this important distinction between audio signals and MPEG audio data and ATRAC data as set forth in the last response, and instead, simply offers the unsubstantiated statement that “Applicant argues insignificant points which do not place the application in condition for allowance.” (Action, pg. 7).

Applicant once again respectfully requests that the Examiner consider and address Applicant’s position with regard to the audio signal element. MPEP 707.07(f) clearly addresses this requirement, such that:

“In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application.

Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment.

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."

5. Duplication of audio signals does not involve only routine skill

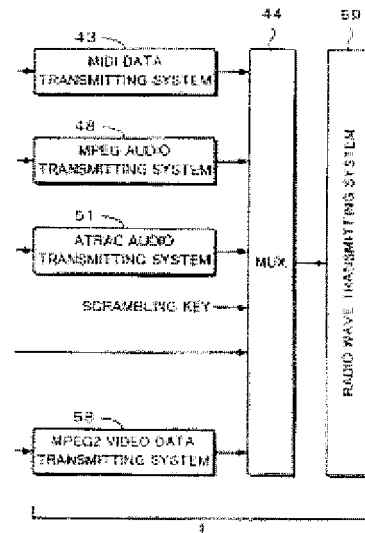
Page 2 of the Action indicates that "it is obvious to add a mere duplication of components such as additional audio sources, wherein mere duplication of parts involves only routine skill in the art." Applicant is well aware of the provisions of MPEP §§ 2144 and 2144.04 which state that if the facts in a prior legal decision are sufficiently similar to those in an application under examination, the Examiner may use the rationale used by the court. MPEP § 2144.04 provides various examples of purportedly common practices which the courts have held normally require only ordinary skill in the art and hence are considered routine expedients

To apply the findings provided by *St. Regis Paper Co. v. Bemis Co.* to the present application, it must be established that the facts of that case are sufficiently similar to those in the present application. The present Action has not met such a burden. Regardless, the points raised by the Examiner are rendered moot since Ishigaki lacks the requisite teaching relating to a single audio signal, much less the two audio signals alleged by the Examiner.

6. No outgoing interface is taught (Examiner failed to address previous comments)

Page 7 of the Applicant's last response provided detailed comments as to the claimed "outgoing multi-channel audio interface." The present Action does not address such comments. Applicant requests that the Examiner consider such comments in a manner consistent with MPEP 707.07(f), as discussed above. For the convenience of the Examiner, Applicant has reproduced below the previously submitted comments on this point.

The Office Action further alleges that the claimed “outgoing multi-channel audio interface” is taught by the MUX 44 component of the digital satellite broadcasting equipment 1. Relevant portions of FIG. 2 of Ishigaki are provided below.



This figure shows MUX 44 multiplexing signaling from systems 43, 48, 51, and 58, and other data. Assuming *arguendo* that MUX 44 is an “interface,” this component provides signaling to an internal component of digital satellite broadcasting equipment 1; namely, radio wave transmitting system 59. The important point here is that MUX 44 provides, at best, an internal interface. There is no teaching or suggestion that MUX 44 provides an outgoing interface, much less the claimed “outgoing multi-channel audio interface.”

In view of the foregoing, Ishigaki fails to teach or suggest a number of features recited in claim 27, and therefore this claim is believed to be patentable. Independent claims 70 and 96 include language similar to that of claim 27, and thus, are each believed to be patentable for reasons similar to those discussed with regard to claim 27. Dependent claims 28-52, 71-86, and 97-104 are believed to be patentable at least by virtue of their respective dependencies on the

patentable independent claims. Applicant provides the following additional comments with regard to various other independent claims.

7. Claims 70 and 96: No rejection is stated

Claim 70 is directed toward a method for interconnecting electronic musical instruments and signal processing systems and recites “control signals” on several occasions. In addition, independent claim 96 repeatedly recites an “external signal processing system.” Neither the first Office Action nor the present Office Action indicates where such elements are found in the cited references. Withdrawal of the stated rejection to independent claims 70 and 96, and their respectively dependencies, claims 71-86 and 97-104, is believed to be proper.

8. Claims 110 and 116

Applicant turns now to the rejection to independent claims 110 and 116, which stand rejected as they were in the last Office Action. Pages 8 and 9 of Applicant’s last response provided remarks relating to assorted deficiencies of the rejection. Unfortunately, the Examiner failed to address in the present Action Applicant’s previously submitted remarks. The Examiner has further failed to provide any additional reasons as to how Ishigaki need be interpreted to teach claims 110 and 116.

The present Action, as was the last Action, is completely silent as to various features recited in these claims (e.g., second electronic musical instrument). Applicant presumed that the first Office Action inadvertently omitted the specifics of the rejection to these claims. However, in view of the remarks submitted in the last response, Applicant is at a loss to understand why the Examiner refuses to address Applicant’s position on these claims.

Applicant once again respectfully requests that the Examiner consider and address Applicant's position with regard to these claims and in a manner consistent with MPEP 707.07(f) (discussed above). For the convenience of the Examiner, Applicant provides below the previously submitted remarks on this point.

As a general comment, Applicant notes that the five-page rejection lists the purported teachings of Ishigaki, but the rejection does not specifically identify the claim numbers in association with the wording of the rejection. The rejection simply identifies the patent, without reference to any particular claim number, and states that the patent discloses a number of features. This makes it extremely difficult for Applicant to identify the basis of the rejection as applied to a particular claim. In the event that the rejection is maintained, Applicant requests that the Examiner identify the particular parts of Ishigaki which are relied upon. Such a request is believed proper based upon the requirements of MPEP § 707, citing 37 CFR § 1.104(c)(2), which provides:

“... When a reference is complex or shows or describes other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

Regardless, Applicant has reviewed the Ishigaki patent and is unable to find any teaching of, for example, the following:

- “wherein said incoming MIDI control signals are generated by a first electronic music system,” or
- “providing said incoming MIDI control signals to a second electronic music system.”

For at least these reasons, independent claims 110 and 116 are believed to be patentable. Dependent claims 111-114 are also believed to be patentable at least by virtue of their dependence on patentable independent claim 111.

Rejection under 35 U.S.C. § 103(a)

Claim 33 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ishigaki, in view of Official Notice taken by the Examiner. Applicant submits that this claim is patentable at least by virtue of its dependency on patentable claim 27.

CONCLUSION

In light of the above remarks, Applicant submits that the present Response places all claims of the present application in condition for allowance. Reconsideration of the application is requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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